



FOR CLERK USE ONLY

City Council

Item No. _____

CITY COUNCIL AGENDA
FACT SHEET

Administration _____

Department _____

October 13, 2009

Requested Date _____

1. Request:

Council Approval ☒Information Only/
Presentation ☐Other (specify) ☐Hearing ☐

2. Requested Action:

- 1.) Introduce and perform the first reading of the Ordinance by title only, waive full reading.
2.) Adopt Resolution regarding reimbursement agreements.

3. Fiscal Impact:

Revenue:

Increase ☐

Source: _____

N/A

Decrease ☐

Amount: _____

\$

Cost:

Increase ☐

Source: _____

N/A

Decrease ☐

Amount: _____

\$

Does Not Apply ☐

4. Reviewed By:

Finance Dept. on _____

By: _____

Comments: _____

City Attorney on _____

By: _____

Comments: _____

Note: Back up must be submitted along with this form. Deadline is 5:00 p.m., 2 Fridays before the scheduled meeting date.

CLERK USE ONLY:

CITY COUNCIL DATE: _____

Action ☐Filing ☐Consent ☐Presentation ☐Hearing ☐Other(specify) ☐ _____

Reviewed by: City Clerk _____

City Manager _____

Date _____

Date _____

**CITY COUNCIL
AGENDA REPORT**

SUBJECT: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA ADDING CHAPTER 13.40 "DEVELOPER CONSTRUCTED PUBLIC IMPROVEMENTS" TO TITLE 13 "PUBLIC SERVICES" TO THE CALEXICO MUNICIPAL CODE RELATED TO PUBLIC IMPROVEMENTS AND REIMBURSEMENT AGREEMENTS AND A RESOLUTION REGARDING THE SAME

AGENDA DATE: October 13, 2009

PREPARED BY: Jennifer Lyon, City Attorney

RECOMMENDATION:

- 1) Introduce and perform the first reading of the Ordinance by title only, waive full reading of the Ordinance.
- 2) Adopt Resolution regarding reimbursement agreements.

BACKGROUND INFORMATION:

Cities are allowed to impose conditions upon a subdivider or a developer to construct off-site and/or supplemental public improvements that may benefit other properties not participating in the cost of construction pursuant to State law and a city's own police power. Where cities require a subdivider to construct such offsite or supplemental improvements pursuant to the Subdivision Map Act, the City is required to enter into a reimbursement agreement to allow the subdivider to recoup costs from property owners who benefit from such improvements. In addition, in other circumstances a developer may desire, or be required as a condition of development, to finance the construction of improvements including offsite and supplemental public improvements. These improvements may benefit adjacent property owners who are not participating in the cost of improvements. The proposed Ordinance is meant to set forth a uniform process for entering into all such reimbursement agreements.

The proposed Resolution will (in the interim) implement the process set forth in the Ordinance until the Ordinance takes effect.

DISCUSSION:

The proposed Ordinance will add Chapter 13.40 "Developer Constructed Public Improvements" to Title 13 "Public Services" of the Calexico Municipal Code. The Ordinance sets forth a comprehensive process for: determining when reimbursement agreements are to be entered into; a process for reviewing a reimbursement agreement; the required contents of such an agreement,

consideration of a reimbursement agreement by the City Council at a noticed public hearing; and the management and payment procedures pursuant to a reimbursement agreement. The proposed Ordinance is modeled after similar ordinances enacted by other municipalities in the State of California. The proposed Ordinance will apply to all reimbursement agreements for supplemental or offsite permanent improvements including required reimbursement agreements pursuant to the Subdivision Map Act.

The proposed Resolution mirrors the proposed Ordinance and will allow the City to have an official policy in place to process and implement a reimbursement agreement until the Ordinance takes effect.

Attachments:

- A. Draft Ordinance
- B. Draft Resolution

RESOLUTION NO. 2009-____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO RELATED
TO PUBLIC IMPROVEMENTS AND REIMBURSEMENT AGREEMENTS**

WHEREAS, cities are allowed to impose conditions upon a subdivider or a developer to construct off-site and/or supplemental public improvements that may benefit other properties not participating in the cost of construction pursuant to State law and a city's own police power; and

WHEREAS, developers may desire, or be required as a condition of development, to finance the construction of improvements including offsite and supplemental public improvements; and

WHEREAS, these improvements may benefit adjacent property owners who are not participating in the cost of improvements; and

WHEREAS, the City Council finds and determines that those developers who finance the cost of public improvements that also benefit other properties may be eligible to enter a reimbursement agreement with the City; and

WHEREAS, this Resolution is meant to set forth a uniform process for entering into such reimbursement agreements.

NOW, THEREFORE, the City Council of the City of Calexico does hereby resolve as follows:

1. The findings listed above are true and correct.
2. Exhibit "A" attached hereto is hereby adopted in its entirety.
3. This Resolution will apply to any reimbursement agreements entered into prior to Ordinance No. ____ taking effect. After Ordinance No. ____ takes effect, all reimbursement agreements entered into after the effective date will be governed under Ordinance No. ____.

PASSED, APPROVED, AND ADOPTED at the regular meeting of the City Council of the City of Calexico this ____ day of _____ 2009.

DAVID OUZAN, MAYOR

ATTEST:

LOURDES CORDOVA, CITY CLERK

) APPROVED AS TO FORM:

JENNIFER M. LYON, CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL) SS.
CITY OF CALEXICO)

I, LOURDES CORDOVA, CITY CLERK OF THE CITY OF CALEXICO, DO HEREBY CERTIFY THAT THE ABOVE FOREGOING RESOLUTION NO. 2009-__ WAS DULY PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CALEXICO ON THIS __ DAY OF __, 2009 BY THE FOLLOWING VOTE, TO WIT:

AYES:

NOES:

ABSENT:

LOURDES CORDOVA, CITY CLERK

Exhibit "A"

PUBLIC SERVICES

DEVELOPER CONSTRUCTED PUBLIC IMPROVEMENTS

1. Public improvements.

The city may impose a requirement that a developer construct or extend permanent public improvements that benefit other properties not participating in the cost of the improvements. When developers are required or desire to construct or extend permanent improvements that benefit other properties not participating in the cost of the improvements, the developer may be eligible to enter into a reimbursement agreement as provided in this Resolution. All such improvements shall be dedicated to the public and may be reimbursed pursuant to this Resolution. All such improvements shall conform to the standards, policies, and specifications of the city.

2. Subdivider supplemental improvements.

The city may impose a requirement that improvements installed by a subdivider for the benefit of a subdivision shall contain supplemental size, capacity, number, or length for the benefit of property not within the subdivision, and that those improvements be dedicated to the public pursuant to Government Code section 66485. Supplemental length may include minimum sized offsite sewer lines necessary to reach a sewer outlet in existence at that time. When such additional or supplemental improvements are required, the procedures in this Resolution will be used to enter into a reimbursement agreement with the subdivider. The reimbursement agreement shall provide for reimbursement from all parties or owners of properties benefited by said improvements. The amount of the reimbursement shall be equal to the difference in cost between the total actual cost of the improvements, including the additional or supplemental facilities, and the cost of the improvements had not the additional or supplemental facilities been required. All such improvements shall conform to the standards, policies, and specifications of the city.

3. Improvements required.

Notwithstanding any other provision of the Calexico municipal code, and unless prohibited by state law, where improvements are required by the city pursuant to section 1, section 2, project entitlements, or otherwise in the Calexico municipal code or state law, no final approval shall be given to any final subdivision map, tentative map, land division, reversion to acreage map, lot line adjustment, land development permit, use permit, building permit, certificate of occupancy, or other procedure or process requiring city approval, until all such improvements have been constructed in accordance with city standards, policies and specifications, or the subdivider or developer has entered into a suitable agreement with the city to construct such improvements and has posted any necessary improvement securities.

4. Reimbursement application requirements.

The developer/subdivider shall provide to the city engineer a completed reimbursement agreement in the format approved by the city, which shall be submitted to the city engineer prior to the acceptance of the improvements by the city. The developer/subdivider shall also provide a deposit to cover the estimated city administrative costs to review, process and approve the agreement. The developer/subdivider applying for reimbursement shall be solely responsible for all information needed to process the reimbursement agreement. Any errors or inaccuracies may constitute grounds for the denial of the application.

5. Form and content of agreement.

The form and content of the reimbursement agreement shall be prepared to the satisfaction of the city engineer and city attorney. The agreement must be prepared with the assistance of a State of California licensed civil engineer and shall contain the following:

- A. The legal description of all benefiting properties including the developer/subdivider's property.
- B. A detailed plat drawn at an engineering scale on legal-size paper showing the precise locations of all improvements and complete dimensions (including frontage) of all benefiting property.
- C. A proposed reimbursement allocation schedule to include a list of all benefiting properties with current Tax Assessor's parcel numbers, the name(s) of benefiting property-owner(s), property street addresses, acreage of benefiting parcels, and a benefit charge. The amount of the benefit charge assigned to each benefiting parcel shall be subject to the approval of the city council based upon a recommendation by the city engineer. The benefit charge assigned to each parcel shall bear a reasonable relationship to the benefit conferred upon that parcel by the improvements. Interest and a charge for city staff time to administer the reimbursement agreement shall also be charged to the benefited property owner on a yearly basis. The benefit charge shall be recalculated annually to include an amount attributable to interest, using the Engineering News Record 20 Cities Construction Cost Index as of the end of the year.
- D. A detailed estimated cost of the design and construction of the permanent improvement.
- E. Terms, conditions and covenants of reimbursement consistent with the requirements of this Resolution.
- F. A provision requiring the developer/subdivider to indemnify, defend, and hold harmless the city for any legal liability involved in approval of the reimbursement agreement, or allocation and collection of benefit charges under the reimbursement agreement.

G. A provision fixing the time period for collecting benefit charges and accrued interest at not more than ten (10) years following the approval of the reimbursement agreement.

6. Notice and hearing.

Upon receipt of the agreement proposed by the developer/subdivider, the same shall be referred to the city engineer, together with a preliminary estimate of the total cost of such improvements. Upon receipt of the application, the city engineer will review the proposed benefit assessment and the agreement and recommend approval, disapproval or modification thereof and shall set a date for a public hearing of the city council. The proposed area of benefit shall include all parcels of land, or parts thereof, within the city, which may be conveniently served by the proposed improvement extension or development. Not less than ten (10) days prior to the city council hearing the city clerk shall notify the owner, or owners, of the land within the benefited area, of a public hearing to be conducted by the city council on the question of the approval, conditional approval, or denial of the reimbursement agreement. The developer/subdivider shall provide address labels for all affected properties and shall pay all fees necessary for notice of the hearing at which the reimbursement agreement is considered.

7. Decision of city council.

After the hearing provided for in section 6, the city council shall determine in its sole judgment and discretion whether or not the construction of the improvements would be in the best interest of the city and whether the proposed reimbursement agreement shall be approved, conditionally approved, or denied. In any case the city council will have the final determination as to the amount to be reimbursed through each agreement and the allocation thereof amongst the benefiting parcels.

8. Recording required.

Any executed reimbursement agreement subject to this Resolution shall be recorded with the county recorder for the County of Imperial.

9. Reimbursement proceeds.

Pursuant to a reimbursement agreement subject to this Resolution, the city will process reimbursement payments to the developer/subdivider from benefit charges collected by the city as follows:

A. The benefit charges allocated and imposed upon benefiting properties shall be collected by the city, where not prohibited by state law, as a condition of approval of any final subdivision map, tentative map, land division, reversion to acreage map, lot line adjustment, land development permit, use permit, building permit, certificate of occupancy, or other procedure or process requiring city approval for the benefiting property; provided, that imposition of such conditions shall be reasonably related to such development.

B. All benefit charges collected by the city shall be deposited to a trust fund in a local institutional depository.

C. The city shall notify the developer/subdivider of the existence of funds collected under the reimbursement agreement at the address provided in the reimbursement agreement. The developer/subdivider shall then contact the city to obtain a reimbursement payment. The city need make no further inquiry, and if funds are left in the reimbursement fund beyond the term of the reimbursement agreement, such funds shall be forfeited to the city and can be transferred to the general fund of the city to be used for the construction of public improvements.

D. Reimbursement payments to the developer/subdivider of any benefit charges collected by the city shall be made at such times as are convenient to the city after the developer/subdivider has responded to the notification provided by the city, but in no event more than sixty (60) days after receipt by the city of the developer/subdivider's response.

E. The developer/subdivider shall be entitled to receive reimbursement payments from benefit charges collected by the city for the period of time specified in the reimbursement agreement, or until all benefit charges as specified in the reimbursement agreement have been paid to the developer/subdivider, whichever occurs first. Following full reimbursement to the developer/subdivider as provided in this section, or upon expiration of the reimbursement agreement, the developer/subdivider shall be entitled to no further reimbursements from benefit charges which might be charged by the city, and all payments thereafter accruing shall be and become the property of the city's general fund.

F. The reimbursement payments to the developer/subdivider shall include interest accrued as set forth in section 5 (C).

G. The city shall retain the portion of the reimbursement payment paid by the benefiting property-owner for the city's administrative charges.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO,
CALIFORNIA ADDING CHAPTER 13.40 "DEVELOPER CONSTRUCTED PUBLIC
IMPROVEMENTS" TO TITLE 13 "PUBLIC SERVICES" TO THE CALEXICO
MUNICIPAL CODE RELATED TO PUBLIC IMPROVEMENTS AND
REIMBURSEMENT AGREEMENTS**

WHEREAS, cities are allowed to impose conditions upon a subdivider or a developer to construct off-site and/or supplemental public improvements that may benefit other properties not participating in the cost of construction pursuant to State law and a city's own police power; and

WHEREAS, developers may desire, or be required as a condition of development, to finance the construction of improvements including offsite and supplemental public improvements; and

WHEREAS, these improvements may benefit adjacent property owners who are not participating in the cost of improvements; and

WHEREAS, the City Council finds and determines that those developers who finance the cost of public improvements that also benefit other properties may be eligible to enter a reimbursement agreement with the City; and

WHEREAS, this Ordinance is meant to set forth a uniform process for entering into such reimbursement agreements.

NOW, THEREFORE, the City Council of the City of Calexico does ordain as follows:

SECTION ONE:

The recitals listed above are true and correct.

SECTION TWO:

That Chapter 13.40 "Developer Constructed Public Improvements" of the Municipal Code is hereby added to the Calexico Municipal Code to read as shown in Exhibit "A" attached hereto and incorporated herein.

SECTION THREE:

This Ordinance was introduced on _____, 2009 and adopted on _____, 2009 and shall become effective 30 days after the date of adoption.

SECTION FOUR:

Calexico City Council Resolution No. _____, approved on _____, 2009 shall govern the reimbursement agreements entered into prior to the effective date of this Ordinance. Once this Ordinance takes effect, this Ordinance will govern reimbursement agreements that are entered into thereafter.

SECTION FIVE:

If any provision or clause of this Ordinance or Exhibit "A" or the application thereof to any person or circumstance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other ordinance provisions or clauses or applications therefore which can be implemented without the invalid provision, clause or application, and to this end the provisions and clauses of this Ordinance are declared to be severable.

SECTION SIX:

The City Clerk is directed to prepare and have published a summary of this Ordinance no less than five days prior to the consideration of its adoption and again 15 days following adoption indicating votes cast.

PASSED AND ADOPTED this ____ day of _____, 2009 by the following vote, to wit.

AYES:

NOES:

ABSENT:

ABSTAIN:

David Ouzan, Mayor
City of Calexico, California

ATTEST AND CERTIFICATION

I hereby certify that this is a true and correct copy of Ordinance No. _____, which has been published pursuant to law.

Lourdes Cordova, City Clerk

Exhibit "A"

TITLE 13 PUBLIC SERVICES

CHAPTER 13.40 DEVELOPER CONSTRUCTED PUBLIC IMPROVEMENTS

13.40.010 Public improvements.

The city may impose a requirement that a developer construct or extend permanent public improvements that benefit other properties not participating in the cost of the improvements. When developers are required or desire to construct or extend permanent improvements that benefit other properties not participating in the cost of the improvements, the developer may be eligible to enter into a reimbursement agreement as provided in this chapter. All such improvements shall be dedicated to the public and may be reimbursed pursuant to this chapter. All such improvements shall conform to the standards, policies, and specifications of the city.

13.40.020 Subdivider supplemental improvements.

The city may impose a requirement that improvements installed by a subdivider for the benefit of a subdivision shall contain supplemental size, capacity, number, or length for the benefit of property not within the subdivision, and that those improvements be dedicated to the public pursuant to Government Code section 66485. Supplemental length may include minimum sized offsite sewer lines necessary to reach a sewer outlet in existence at that time. When such additional or supplemental improvements are required, the procedures in this chapter will be used to enter into a reimbursement agreement with the subdivider. The reimbursement agreement shall provide for reimbursement from all parties or owners of properties benefited by said improvements. The amount of the reimbursement shall be equal to the difference in cost between the total actual cost of the improvements, including the additional or supplemental facilities, and the cost of the improvements had not the additional or supplemental facilities been required. All such improvements shall conform to the standards, policies, and specifications of the city.

13.40.030 Improvements required.

Notwithstanding any other provision of the municipal code, and unless prohibited by state law, where improvements are required by the city pursuant to section 13.40.010, section 13.40.020, project entitlements, or otherwise in this municipal code or state law, no final approval shall be given to any final subdivision map, tentative map, land division, reversion to acreage map, lot line adjustment, land development permit, use permit, building permit, certificate of occupancy, or other procedure or process requiring city approval, until all such improvements have been constructed in accordance with city standards, policies and specifications, or the subdivider or developer has entered into a suitable agreement with the city to construct such improvements and has posted any necessary improvement securities.

13.40.040 Reimbursement application requirements.

The developer/subdivider shall provide to the city engineer a completed reimbursement agreement in the format approved by the city, which shall be submitted to the city engineer prior to the acceptance of the improvements by the city. The developer/subdivider shall also provide a deposit to cover the estimated city administrative costs to review, process and approve the agreement. The developer/subdivider applying for reimbursement shall be solely responsible for all information needed to process the reimbursement agreement. Any errors or inaccuracies may constitute grounds for the denial of the application.

13.40.050 Form and content of agreement.

The form and content of the reimbursement agreement shall be prepared to the satisfaction of the city engineer and city attorney. The agreement must be prepared with the assistance of a State of California licensed civil engineer and shall contain the following:

- A. The legal description of all benefiting properties including the developer/subdivider's property.
- B. A detailed plat drawn at an engineering scale on legal-size paper showing the precise locations of all improvements and complete dimensions (including frontage) of all benefiting property.
- C. A proposed reimbursement allocation schedule to include a list of all benefiting properties with current Tax Assessor's parcel numbers, the name(s) of benefiting property-owner(s), property street addresses, acreage of benefiting parcels, and a benefit charge. The amount of the benefit charge assigned to each benefiting parcel shall be subject to the approval of the city council based upon a recommendation by the city engineer. The benefit charge assigned to each parcel shall bear a reasonable relationship to the benefit conferred upon that parcel by the improvements. Interest and a charge for city staff time to administer the reimbursement agreement shall also be charged to the benefited property owner on a yearly basis. The benefit charge shall be recalculated annually to include an amount attributable to interest, using the Engineering News Record 20 Cities Construction Cost Index as of the end of the year.
- D. A detailed estimated cost of the design and construction of the permanent improvement.
- E. Terms, conditions and covenants of reimbursement consistent with the requirements of this chapter.
- F. A provision requiring the developer/subdivider to indemnify, defend, and hold harmless the city for any legal liability involved in approval of the reimbursement agreement, or allocation and collection of benefit charges under the reimbursement agreement.
- G. A provision fixing the time period for collecting benefit charges and accrued interest at not more than ten (10) years following the approval of the reimbursement agreement.

13.40.060 Notice and hearing.

Upon receipt of the agreement proposed by the developer/subdivider, the same shall be referred to the city engineer, together with a preliminary estimate of the total cost of such improvements. Upon receipt of the application, the city engineer will review the proposed benefit assessment and the agreement and recommend approval, disapproval or modification thereof and shall set a date for a public hearing of the city council. The proposed area of benefit shall include all parcels of land, or parts thereof, within the city, which may be conveniently served by the proposed improvement extension or development. Not less than ten (10) days prior to the city council hearing the city clerk shall notify the owner, or owners, of the land within the benefited area, of a public hearing to be conducted by the city council on the question of the approval, conditional approval, or denial of the reimbursement agreement. The developer/subdivider shall provide address labels for all affected properties and shall pay all fees necessary for notice of the hearing at which the reimbursement agreement is considered.

13.40.070 Decision of city council.

After the hearing provided for in section 13.40.060, the city council shall determine in its sole judgment and discretion whether or not the construction of the improvements would be in the best interest of the city and whether the proposed reimbursement agreement shall be approved, conditionally approved, or denied. In any case the city council will have the final determination as to the amount to be reimbursed through each agreement and the allocation thereof amongst the benefiting parcels.

13.40.080 Recording required.

Any executed reimbursement agreement subject to this chapter shall be recorded with the county recorder for the County of Imperial.

13.40.090 Reimbursement proceeds.

Pursuant to a reimbursement agreement subject to this chapter, the city will process reimbursement payments to the developer/subdivider from benefit charges collected by the city as follows:

A. The benefit charges allocated and imposed upon benefiting properties shall be collected by the city, where not prohibited by state law, as a condition of approval of any final subdivision map, tentative map, land division, reversion to acreage map, lot line adjustment, land development permit, use permit, building permit, certificate of occupancy, or other procedure or process requiring city approval for the benefiting property; provided, that imposition of such conditions shall be reasonably related to such development.

B. All benefit charges collected by the city shall be deposited to a trust fund in a local institutional depository.

C. The city shall notify the developer/subdivider of the existence of funds collected under the reimbursement agreement at the address provided in the reimbursement agreement. The developer/subdivider shall then contact the city to obtain a reimbursement payment. The city need make no further inquiry, and if funds are left in the reimbursement fund beyond the term of the reimbursement agreement, such funds shall be forfeited to the city and can be transferred to the general fund of the city to be used for the construction of public improvements.

D. Reimbursement payments to the developer/subdivider of any benefit charges collected by the city shall be made at such times as are convenient to the city after the developer/subdivider has responded to the notification provided by the city, but in no event more than sixty (60) days after receipt by the city of the developer/subdivider's response.

E. The developer/subdivider shall be entitled to receive reimbursement payments from benefit charges collected by the city for the period of time specified in the reimbursement agreement, or until all benefit charges as specified in the reimbursement agreement have been paid to the developer/subdivider, whichever occurs first. Following full reimbursement to the developer/subdivider as provided in this section, or upon expiration of the reimbursement agreement, the developer/subdivider shall be entitled to no further reimbursements from benefit charges which might be charged by the city, and all payments thereafter accruing shall be and become the property of the city's general fund.

F. The reimbursement payments to the developer/subdivider shall include interest accrued as set forth in section 13.40.050 (C).

G. The city shall retain the portion of the reimbursement payment paid by the benefiting property-owner for the city's administrative charges.